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29 CFR Ch. I (7-1-12 Edition)

Board, the regional director shall transmit the record to the Board.

[46 FR 45922, Sept. 15, 1981]

§ 102.69 Election procedure; tally of ballots; objections; certification by the regional director; requests for review of directions of elections; hearings; hearing officer reports on objections and challenges; exceptions to hearing officer reports; requests for review of regional director decisions in stipulated or directed elections.

(a) *Election procedure; tally; objections.* Unless otherwise directed by the Board, all elections shall be conducted under the supervision of the regional director in whose Region the proceeding is pending. All elections shall be by secret ballot. Whenever two or more labor organizations are included as choices in an election, either participant may, upon its prompt request to and approval thereof by the regional director, whose decision shall be final, have its name removed from the ballot: *Provided, however,* That in a proceeding involving an employer-filed petition or a petition for decertification the labor organization certified, currently recognized, or found to be seeking recognition may not have its name removed from the ballot without giving timely notice in writing to all parties and the regional director, disclaiming any representation interest among the employees in the unit. A pre-election conference may be held at which the parties may check the list of voters and attempt to resolve any questions of eligibility or inclusions in the unit. When the election is conducted manually, any party may be represented by observers of its own selection, subject to such limitations as the regional director may prescribe. Any party and Board agents may challenge, for good cause, the eligibility of any person to participate in the election. The ballots of such challenged persons shall be impounded. Upon the conclusion of the election the ballots will be counted and a tally of ballots prepared and immediately made available to the parties. Within 7 days after the tally of ballots has been prepared, any party may file with the regional director an original and five copies of objections to the conduct of the election or to conduct af-

fecting the results of the election which shall contain a short statement of the reasons therefor. Such filing must be timely whether or not the challenged ballots are sufficient in number to affect the results of the election. A person filing objections by facsimile pursuant to §102.114(f) shall also file an original for the Agency's records, but failure to do so shall not affect the validity of the filing if otherwise proper. In addition, extra copies need not be filed if the filing is by facsimile pursuant to §102.114(f). The Regional Director will cause a copy of the objections to be served on each of the other parties to the proceeding. Within 7 days after the filing of objections, or such additional time as the Regional Director may allow, the party filing objections shall furnish to the Regional Director the evidence available to it to support the objections.

(b) *Requests for review of directions of elections.* If the election has been conducted pursuant to §102.67, any party may file a request for review of the decision and direction of election with the Board in Washington, DC. In the absence of election objections or potentially determinative challenges, the request for review of the decision and direction of election shall be filed within 14 days after the tally of ballots has been prepared. In a case involving election objections or potentially determinative challenges, the request for review shall be filed within 14 days after the regional director's decision on challenged ballots, on objections, or on both, and may be combined with a request for review of that decision as provided in paragraph (d)(3) of this section. *Provided, however,* That if the hearing on objections and determinative challenges has been consolidated with an unfair labor practice proceeding before an administrative law judge, the request for review of the decision and direction of election shall be filed within 14 days after issuance of the administrative law judge's decision. The procedures for such request for review shall be the same as set forth in §102.67(c) through (g), and (k), insofar as applicable. If no request for review is filed, the decision and direction of election is final and shall have the same effect as if issued by the

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Board. The parties may, at any time, waive their right to request review. Failure to request review shall preclude such parties from relitigating, in any related subsequent unfair labor practice proceeding, any issue which was, or could have been, raised in the representation proceeding. Denial of a request for review shall constitute an affirmation of the regional director's action which shall also preclude relitigating any such issues in any related subsequent unfair labor practice proceeding.

(c) *Certification in the absence of objections, determinative challenges and requests for review.* If no objections are filed within the time set forth in paragraph (a) of this section, if the challenged ballots are insufficient in number to affect the results of the election, if no runoff election is to be held pursuant to §102.70, and if no request for review is filed pursuant to paragraph (b) of this section, the regional director shall forthwith issue to the parties a certification of the results of the election, including certification of representative where appropriate, with the same force and effect as if issued by the Board, and the proceeding will thereupon be closed.

(d)(1)(i) *Decisions without a hearing.* If timely objections are filed to the conduct of an election or to conduct affecting the results of the election, and the regional director determines that the party's supporting evidence would not constitute grounds for overturning the election if introduced at a hearing, and the regional director determines that any determinative challenges do not raise substantial and material factual issues, the regional director shall issue a decision disposing of objections and determinative challenges, and a certification of the results of the election, including certification of representative where appropriate.

(ii) *Notices of hearing.* If timely objections are filed to the conduct of the election or to conduct affecting the results of the election, and the regional director determines that the party's supporting evidence could be grounds for overturning the election if introduced at a hearing, or if the challenged ballots are sufficient in number to affect the results of the election and

raise substantial and material factual issues, the regional director shall prepare and caused to be served on the parties a notice of hearing at a place and time fixed therein: *Provided, however,* that the regional director may consolidate the hearing concerning objections and determinative challenges with an unfair labor practice proceeding before an administrative law judge. In any proceeding wherein the election has been held pursuant to §102.62(a) or (c) and the representation case has been consolidated with an unfair labor practice proceeding for purposes of hearing, the administrative law judge shall, after issuing his decision, sever the representation case and transfer it to the regional director for further processing.

(iii) *Hearings; hearing officer reports; exceptions to regional director.* Any hearing pursuant to this section shall be conducted in accordance with the provisions of §§102.64, 102.65, and 102.66, insofar as applicable, except that, upon the close of such hearing, the hearing officer shall prepare and cause to be served on the parties a report resolving questions of credibility and containing findings of fact and recommendations as to the disposition of the issues. Any party may, within 14 days from the date of issuance of such report, file with the regional director an original and one copy of exceptions to such report, with supporting brief if desired. A copy of such exceptions, together with a copy of any brief filed, shall immediately be served on the other parties and a statement of service filed with the regional director. Within 7 days from the last date on which exceptions and any supporting brief may be filed, or such further time as the regional director may allow, a party opposing the exceptions may file an answering brief with the regional director. An original and one copy shall be submitted. A copy of such answering brief shall immediately be served on the other parties and a statement of service filed with the regional director. The regional director shall thereupon decide the matter upon the record or make other disposition of the case. If no exceptions are filed to such report, the regional director, upon the expiration of the period for filing such exceptions,

may decide the matter forthwith upon the record or may make other disposition of the case.

(2) *Regional director decisions in consent or full consent elections.* If the election has been held pursuant to §102.62(a) or (c), the decision of the regional director shall be final and shall include a certification of the results of the election, including certification of representative where appropriate.

(3) *Requests for review of regional director decisions in stipulated or directed elections.* If the election has been held pursuant to §102.62(b) or §102.67, the decision of the regional director shall include a certification of the results of the election, including certification of representative where appropriate. Within 14 days from the date of issuance of the regional director's decision on challenged ballots or on objections, or on both, any party may file with the Board in Washington, DC, a request for review of such decision which may be combined with a request for review of the regional director's decision to direct an election as provided in §§102.67(b) and 102.69(b). The procedures for post-election requests for review shall be the same as set forth in §102.67(c) through (g), and (k), insofar as applicable. If no request for review is filed, the decision is final and shall have the same effect as if issued by the Board. The parties may, at any time, waive their right to request review. Failure to request review shall preclude such parties from relitigating, in any related subsequent unfair labor practice proceeding, any issue which was, or could have been, raised in the representation proceeding. Denial of a request for review shall constitute an affirmance of the regional director's action which shall also preclude relitigating any such issues in any related subsequent unfair labor practice proceeding. *Provided, however,* That in any proceeding wherein a representation case has been consolidated with an unfair labor practice proceeding for purposes of hearing and the election was conducted pursuant to §102.62(b) or §102.67, the provisions of §102.46 shall govern with respect to the filing of exceptions or an answering brief to the exceptions to the administrative law judge's decision.

(e)(1)(i) *Record in case with hearing.* In a proceeding pursuant to this section in which a hearing is held, the record in the case shall consist of the notice of hearing, motions, rulings, orders, stenographic report of the hearing, stipulations, exhibits, together with the objections to the conduct of the election or to conduct affecting the results of the election, any briefs or other legal memoranda submitted by the parties, any report on such objections and/or on challenged ballots, exceptions, the decision of the regional director, any requests for review, and the record previously made as defined in §102.68. Materials other than those set out above shall not be a part of the record.

(ii) *Record in case with no hearing.* In a proceeding pursuant to this section in which no hearing is held, the record shall consist of the objections to the conduct of the election or to conduct affecting the results of the election, any decision on objections or on challenged ballots and any request for review of such a decision, any documentary evidence, excluding statements of witnesses, relied upon by the regional director in his decision, any briefs or other legal memoranda submitted by the parties, any other motions, rulings or orders of the regional director, as well as any decision and direction of election and the record previously made as defined in §102.68. Materials other than those set out above shall not be a part of the record, except as provided in paragraph (e)(3) of this section.

(2) Immediately upon issuance of an order transferring the case to the Board, or upon issuance of an order granting a request for review by the Board, the regional director shall transmit to the Board the record of the proceeding as defined in paragraph (e)(1) of this section.

(3) In a proceeding pursuant to this section in which no hearing is held, a party filing a request for review of a regional director's decision on objections or challenges, or any opposition thereto, may support its submission to the Board by appending thereto copies of documentary evidence, including copies of any affidavits it has timely submitted to the regional director and

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which were not included in the decision. Documentary evidence so appended shall thereupon become part of the record in the proceeding. Failure to append that evidence to its submission to the Board in the representation proceeding as provided above, shall preclude a party from relying on such evidence in any subsequent unfair labor proceeding.

(f) *Revised tally of ballots.* In any case under this section in which the regional director or the Board, upon a ruling on challenged ballots, has directed that such ballots be opened and counted and a revised tally of ballots issued, and no objection to such revised tally is filed by any party within 7 days after the revised tally of ballots has been made available, the regional director shall forthwith issue to the parties certification of the results of the election, including certifications of representative where appropriate, with the same force and effect as if issued by the Board. The proceeding shall thereupon be closed.

(g) *Format of filings with regional director.* All documents filed with the regional director under the provisions of this section shall be filed double spaced, on 8½ by 11-inch paper, and shall be printed or otherwise legibly duplicated. Briefs in support of exceptions or answering briefs shall not exceed 50 pages in length, exclusive of subject index and table of cases and other authorities cited, unless permission to exceed that limit is obtained from the regional director by motion, setting forth the reasons therefor, filed not less than 5 days, including Saturdays, Sundays, and holidays, prior to the date the brief is due. Where any brief filed pursuant to this section exceeds 20 pages, it shall contain a subject index with page references and an alphabetical table of cases and other authorities cited.

(h) *Extensions of time.* Requests for extensions of time to file exceptions, requests for review, supporting briefs, or answering briefs, as permitted by this section, shall be filed with the Board or the regional director, as the case may be. The party filing the request for an extension of time shall serve a copy thereof on the other parties and, if filed with the Board, on the regional

director. A statement of such service shall be filed with the document.

[76 FR 80186, Dec. 22, 2011]

§ 102.70 Runoff election.

(a) The regional director shall conduct a runoff election, without further order of the Board, when an election in which the ballot provided for not less than three choices (i.e., at least two representatives and “neither”) results in no choice receiving a majority of the valid ballots cast and no objections are filed as provided in §102.69. Only one runoff shall be held pursuant to this section.

(b) Employees who were eligible to vote in the election and who are in an eligible category on the date of the runoff election shall be eligible to vote in the runoff election.

(c) The ballot in the runoff election shall provide for a selection between the two choices receiving the largest and second largest number of votes.

(d) In the event the number of votes cast in an inconclusive election in which the ballot provided for a choice among two or more representatives and “neither” or “none” is equally divided among the several choices; or in the event the number of ballots cast for one choice in such election is equal to the number cast for another of the choices but less than the number cast for the third choice, the regional director shall declare the first election a nullity and shall conduct another election, providing for a selection from among the three choices afforded in the original ballot; and he shall thereafter proceed in accordance with paragraphs (a), (b), and (c) of this section. In the event two or more choices receive the same number of ballots and another choice receives no ballots and there are no challenged ballots that would affect the results of the election, and if all eligible voters have cast valid ballots, there shall be no runoff election and a certification of results of election shall be issued. Only one such further election pursuant to this paragraph may be held.

(e) Upon the conclusion of the runoff election, the provisions of §102.69 shall govern, insofar as applicable.

[26 FR 3891, May 4, 1961]